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09/871,444	05/31/2001	Thomas W. Nickerson	OID06-37(2401)	8887
58403 7590 07/17/2008 BARRY W. CHAPIN, ESQ. CHAPIN INTELLECTUAL PROPERTY LAW, LLC WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE, SUITE 280 WESTBOROUGH, MA 01581			EXAMINER AVELLINO, JOSEPH E	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/871,444
Filing Date: May 31, 2001
Appellant(s): NICKERSON, THOMAS W.

Stanley Hill
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 15, 2008 appealing from the Office action mailed December 17, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 36-51 are rejected under 35 USC 101. The Rejection of claims 13, 14, 32, 33, and 36-45 was withdrawn in the Final Rejection dated December 17, 2007.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 36-51 rejected under 35

USC 101. In light of current Office interpretation of a "result", claims 36-51 provide a tangible, concrete, and useful result thus satisfying the requirements of 35 USC 101.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6249804 B1	Lam; Roger Kin-Hung	06-2001
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US 20020038350 A1	Lambert, John H. et al.	03-2002
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"How does JavaScript work and how can I build simple calculators with it?"

www.howstuffworks.com, accessed July 14, 2008

"Official Notice" is taken that both the concepts and advantages of providing for determining whether the request is a "back" request or a "refresh" request is well known and expected in the art as discussed in claims 14 and 33. Appellant has failed to seasonably traverse this assertion and therefore is taken as Applicant's Admitted Prior Art. See MPEP 2144.03

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 13, 14, 32, 33, and 36-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lam (USPN 6,289,804) in view of Lambert et al. (US 2002/0038350) (hereinafter Lambert).

1. Referring to claim 13, Lam discloses a computer program product with a client with a local cache (e.g. abstract) which, in response to receiving client input for content of a web page will determine if there is a cache hit, then determine if the content should be retrieved from the server (i.e. hit with an invalid respond) and transmit the request to a server (col. 2, lines 5-10). Lam does not disclose that the system will insert a unique identifier into the address. In analogous art, Lambert discloses another computer product for caching web pages which receives at a client input related to a request for content of a web page the request including an address for the web page (§ 228-231); inserting a unique identifier at the client into the address and transmitting the request to a server (§ 228-231). It would have been obvious to one of ordinary skill in the art to combine the teaching of Lam with Lambert in order to provide an efficient method of ensuring that the server request is directly from the server by inserting a unique identifier into the address in order to ensure that no stale copies are received by any other proxy servers which might have a stale copy of the data and would return that data instead of from the original content server, thereby guaranteeing that the returned data is a newly retrieved content object from the server.

2. Referring to claim 14, Lam-Lambert discloses the invention substantively as described in claim 13. Lam-Lambert do not explicitly disclose that the system determining whether the request is for a refresh of the current page or for a request for a previously displayed web page, however this feature is well known in the art to determine whether or not to serve a page from the cache or to retrieve a page from the

server. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for determining whether the request is a 'back' request or a current page refresh is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Lam-Lambert to include determining whether the request is a back request or a refresh request in order to aid in the determination of whether to service the page locally, since if the request is a back request, the page would have already been seen by the cache and would normally not be stale yet, thereby reducing unnecessary requests to the server.

3. Claims 32 and 33 are rejected for similar reasons as stated above.
4. Referring to claim 36, Lambert discloses a URL to a content of a web page (¶ 230).
5. Referring to claim 37, Lambert discloses the address includes a query string, the unique identifier being appended to the address in the query string (i.e. a hyperlink is inherently a query string since once the user clicks upon the hyperlink, it requests the page from the server) (¶ 230).
6. Referring to claims 38 and 39, Lambert discloses the unique identifier includes a random number (i.e. the timestamp includes a `math.Random()` function as a seed into the timestamp) (¶ 230-231).

7. Referring to claim 40, Lambert discloses the unique identifier includes an alpha-numeric representation (i.e. the Office construes the term “alpha-numeric representation” as any character string which includes at least one letter or number”, such as a timestamp) (¶ 230-231).
8. Claims 41-45 are rejected for similar reasons as stated above.
9. Referring to claim 46, Lambert discloses receiving a request for content, determining if it should be sent to the server (i.e. request the document), appending the unique identifier to the URL and sending out the request (¶ 230-231).
10. Claims 47-51 are rejected for similar reasons as stated above.

(10) Response to Argument

Appellant's arguments (Brief, pages 5-11) have been fully considered.

Appellant argues that the claims satisfy the requirements of 35 USC 101 (Brief, pages 5-7) have been considered, however since the rejection is hereby withdrawn, the argument is considered moot.

Appellant argues, in substance, that there is no motivation to combine Lam with Lambert (page 8). The Examiner disagrees. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to combine the teaching of Lam with Lambert in order to provide an efficient method of ensuring that the server request is directly from the server by inserting a unique identifier into the address in order to ensure that no stale copies are received by any other proxy servers which might have a stale copy of the data and would return that data instead of from the original content server, thereby guaranteeing that the returned data is a newly retrieved content object from the server. Even though Lam is concerned with increasing cache hits, having stale data within the cache is not welcome. By combining Lambert's cache-busting techniques to the system of Lam, that, when an invalid copy of the data resides in the cache, a user will always receive the most up-to-date copy of the data. By this rationale, the rejection should be maintained.

Appellant argues, in substance, that Lam teaches away from cache bypassing since the purpose of Lam is to increase cache hits (page 8). The Examiner disagrees. Lam only teaches that entries in the cache are accessed *when they are valid*. Lam

expressly discloses that if there is a hit and the cache is valid (i.e. not expired), then, and only then, will the page be fetched. If there is a hit with an invalid response, the request is sent to the server (col. 1, line 58 to col. 2, line 7; col. 4, lines 19-37; Figure 1). This clearly shows that Lam cares more about the most up-to-date data versus increasing cache hits. By combining Lambert's cache-busting techniques to the system of Lam, that, when an invalid copy of the data resides in the cache, a user will always receive the most up-to-date copy of the data. By this rationale, the rejection should be maintained.

Appellant argues, in substance, that Lambert does not teach inserting the identifier at the client, rather it is inserted at the web server (pages 9-10). The Examiner disagrees. Although the web page is generated and maintained at the web server, the actual address (i.e. hyperlink) is not actually created until the page is clicked on at the browser. The Javascript code embedded within the web page is a mere program which generates the unique identifier and then appends it to create the unique URL. This Javascript code is not executed by the Web server, rather is executed by the browser. Support for this position is found in the article "How does JavaScript work and how can I build simple calculators with it?" accessed from www.howstuffworks.com. The article states that "Javascript is a **Client-side Scripting Language**. That means that it is a **computer programming language** that runs inside an Internet browser (a browser is also known as a Web **client** because it connects to a Web **server** to download pages)." This clearly demonstrates that the Javascript is run on the client machine, not at the

web server. Furthermore, Lambert discloses that it is the browser, which executes the Javascript embedded in the page will generate the unique image reference using the time stamp (¶ 231). By this rationale, the rejection should be maintained.

Appellant argues, in substance, that the Examiner has failed to set forth a prima facie case of obviousness of claims 14 and 33 over Lam in view of Lambert because the Examiner mistakenly relies on an "Official Notice" that adds nothing to the teachings of Lam and Lambert (Pages 10-11). The Examiner disagrees.

As a preliminary matter, the Examiner would like to point out that Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

The Examiner believes that this argument pertains to a lack of motivation to modify the teachings of Lam and Lambert to include consideration for whether the request is a "back" or "refresh" request. As such, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

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generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Proper motivation can be found above, which would realize the benefits of determine the particular type of request in order to reduce unnecessary requests to the server. Appellants have not specifically claimed as to what the particular functionalities of the determination of the request is a "back" request or a "refresh" request is, and as such, the Examiner has taken broad consideration when interpreting the claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As such, proper motivation to modify the teachings of Lam and Lambert to include the determination has been provided and therefore the rejection should be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Joseph E. Avellino/

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Art Unit: 2152

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